

04-28919

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF MINNESOTA**

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In Re:

Case No. 04-35013-GFK  
Chapter 7

Ralph Hubbard,

Debtor(s)

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**NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY**

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. Mortgage Electronic Registration Systems, Inc. moves the Court for relief requested below and gives Notice of Hearing.
2. The Court will hold a Hearing on this motion at 10:30 a.m., on September 27, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than September 22, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than September 16, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 26, 2004. The case is now pending in this court.
5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.
6. By mortgage dated April 11, 2003, in the original principal amount of \$175,000.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 1128775, Movant acquired a first mortgage's interest in the following real property (the "Property"), to-wit:

Lot 13, Block 6, Thompson's Grove 4th Addition

The Mortgage was filed in the offices of the Registrar of Titles, for Washington County, Minnesota on May 19, 2003, as Document No. 1128775. A copy of the Mortgage is attached hereto as Exhibit A.

Debtor has listed in his filed bankruptcy schedules that his intent is to surrender said property.

7. The last payment received from Debtors was applied to the March, 2004 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

6 payments @ \$1,655.17	\$9,931.02
6 late charges @ \$67.28	\$403.68
BPO	\$105.00
Attorneys Fees & Cost	\$2,065.26
TOTAL	<hr/> \$12,504.96

The outstanding principal balance due to Movant under the terms of the note is \$171,714.02 as of September 3, 2004, and interest accrues at the rate of 8.5% per diem per day. The amount therefore due and owing on said note is as follows:

Principal Balance	\$171,714.02
Accrued Late charges	\$403.68
BPO	\$105.00
Interest	\$6,810.72
Attorneys Fees & Costs	\$2,065.26
TOTAL	<hr/> \$181,098.68

The fair market value of the Property as averred by the debtor is approximately \$142,500.00.

8. Movant does not have, and has not been offered, adequate protection of its interest in the Property. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 9.9.07.

Signed: /e/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.

Nancy A. Nordmeyer-121356

Lawrence P. Zielke-152559

Attorney for movant

7300 Metro Boulevard #390

Edina, MN 55439-2306

(952) 831-4060

VERIFICATION

I, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

9-7-04

Signed:

[Signature]

Fidelity National Foreclosure Solutions  
1270 Northland Drive, Suite 200  
Mendota Heights, MN 55120

1128775



Office of the  
Registrar of Titles  
Washington County, MN

Certified Bled and/or recorded on:  
2003/05/19 3:55:00 PM

1128775

Certificate #:	50296
Book #:	160
Page #:	175



Cindy Kosmann  
Registrar of Titles

*Cindy Kosmann*

## WASHINGTON COUNTY

Receipt No: 134780 Date: 04/25/2003  
Registration tax hereon of \$402.50 Paid  
MN Conservation Fund M.S. 473H \$5.00 Paid  
Molly F. O'Rourke, Auditor by BJWetzels

*AM*

#20

[Space Above This Line For Recording Data]

Loan Number 2280030336500

MIN: 100077910000453502

## MORTGAGE

S-1119  
Fenny Foundation Title, LLC *Ret*  
5701 Shingle Creek Parkway  
Suite 520  
Brooklyn Center, MN 55430

## DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated **APRIL 11, 2003**, together with all Riders to this document.
- (B) "Borrower" is **RALPH A. HUBBARD, A SINGLE PERSON**. Borrower is the mortgagor under this Security Instrument.
- (C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
- (D) "Lender" is **Decision One Mortgage Company, LLC**. Lender is a **LIMITED LIABILITY COMPANY** organized and existing under the laws of **NORTH CAROLINA**. Lender's address is **6060 J.A. JONES DRIVE, SUITE 1000, CHARLOTTE, NORTH CAROLINA 28287**.
- (E) "Note" means the promissory note signed by Borrower and dated **APRIL 11, 2003**. The Note states that Borrower owes Lender **ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100ths Dollars (U.S.\$175,000.00)** plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **APRIL 16, 2033**.
- (F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
- (G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
- (H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> Second Home Rider                              |
| <input type="checkbox"/> Balloon Rider                    | <input type="checkbox"/> Planned Unit Development Rider | <input checked="" type="checkbox"/> Other(s) [specify] Floor Rate Rider |
| <input type="checkbox"/> 1-4 Family Rider                 | <input type="checkbox"/> Biweekly Payment Rider         |   |



**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF MINNESOTA**

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In Re:

Case Number BKY 04-35013-GFK  
Chapter 7

Ralph Hubbard

Debtor(s)

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**MEMORANDUM OF LAW**

Mortgage Electronic Registration Systems, Inc. ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$12,504.96.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 5 months. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$181,098.68. The fair market value of the property is approximately \$142,500.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 9-9-01.

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

Signed: /e/ NANCY A. NORDMEYER  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA       )  
                                      ) SS  
COUNTY OF HENNEPIN       )

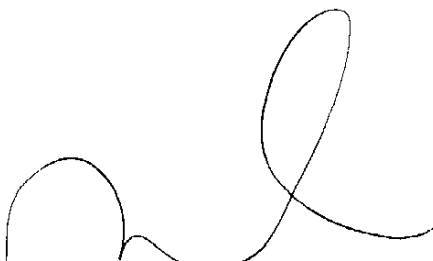
I, **Stephanie Pilegaard** says that on September 9, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Ralph Hubbard  
6644 90th Street South  
Cottage Grove, MN 55016

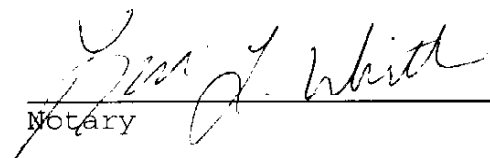
Steven Gale, Esq.  
9301 Bryant Ave South STE 101  
Bloomington, MN 55420

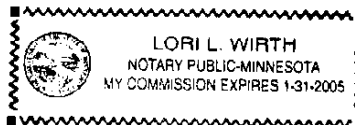
Nauni Manty, Trustee  
333 S. 7th Street STE 2000  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Minneapolis, MN 55415

  
\_\_\_\_\_  
Stephanie Pilegaard

Subscribed and sworn to before me September 9, 2004.

  
\_\_\_\_\_  
Notary





04-28919  
0435854492

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Case Number BKY 04-35013-GFK

Ralph Hubbard  
Debtor(s)

**ORDER FOR RELIEF FROM STAY**

The above-entitled matter came for hearing on September 27, 2004.

**THIS CAUSE** coming to be heard on the Motion of Mortgage Electronic Registration Systems, Inc., by Fidelity National Foreclosure Solutions, the authorized servicer for movant, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED,**

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Mortgage Electronic Registration Systems, Inc., its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot 13, Block 6, Thompson's Grove 4th Addition, Washington County, Minnesota

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court